

ORDINANCE NO. 1100 - 2018

AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING CHAPTER 96 OF THE CITY'S CODE OF ORDINANCES BY CREATING ARTICLE VI, ENTITLED "VACATION, ABANDONMENT, AND CLOSURE OF STREETS, EASEMENTS AND ALLEYS" TO PROVIDE A UNIFORM PROCEDURE FOR APPLICATIONS FOR VACATION, ABANDONMENT, AND CLOSURE OF STREETS, EASEMENTS, ALLEYS, AND OTHER NON-FEE INTERESTS OF THE CITY ON PUBLIC RIGHT-OF-WAY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Miami Springs (the "City") wishes to amend Chapter 96, "Streets, Sidewalks, and Parkways," of the City's Code of Ordinances (the "Code") by creating Article VI, "Vacation, Abandonment, and Closure of Streets, Easements, and Alleys," to establish a uniform procedure for applications for vacation, abandonment, and closure of streets, easements, alleys, and other non-fee interests of the City; to provide a method for the City to vacate, abandon, and close its fee interest; to designate the appropriate departments and boards of the City that shall be responsible for processing such applications; and to provide the methods, procedures and standards which shall govern such processing; and

WHEREAS, the City Council hereby finds that the adoption of this Ordinance is in the best interest and welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, THAT: ¹

Section 1. **Recitals Adopted.** That the above-stated recitals are hereby adopted and confirmed.

Section 2. **Amending Chapter 96 of the City Code.** That the Code of Miami Springs, Florida is hereby amended by creating Article VI, "Vacation, Abandonment, and Closure of Streets, Easements, and Alleys," which Article shall read as follows:

ARTICLE VI. **VACATION, ABANDONMENT, AND CLOSURE OF STREETS, EASEMENTS, AND ALLEYS**

Sec. 96-201. - Purpose and methods.

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicted with ~~double-strikethrough~~ and double underline.

The purpose of this article is to set forth a uniform procedure for applications for vacation, abandonment, and closure of streets, easements, alleys, and other nonfee interests of the city, to provide a method for the city to vacate, abandon, and close its fee interest on the public right-of-way, to designate the appropriate departments and boards of the city that shall be responsible for processing such applications, and to provide the methods, procedures, and standards that shall govern such processing.

Sec. 96-202. - Definitions.

The following words, terms and phrases defined in this section shall have the meaning set forth below whenever they appear in this article, except where the context in which they are used clearly requires a different meaning; or where a different definition is prescribed for a particular section or provision. Words not defined shall be given the meaning provided under their common and ordinary meaning unless the context suggests otherwise.

Abandon or *vacate* means to renounce or disclaim all interest of the city and of the public in and to any land dedicated for transportation or travel by the public.

Easement means any easement granted for the use of nonspecified utilities or to the public in general. Any reference to easement in this article shall refer to a public easement unless otherwise specified.

Right-of-way means any public street, road, alley, place, highway, or other nonfee interest or portion thereof.

Sec. 96-203. - Application form.

(a) Applications may be filed by the owner of record of property abutting or bounding the right-of-way or easement sought to be vacated or by the city. All requests for vacation, abandonment, and closure of rights-of-way, easements, or city property shall be made in writing upon an application form furnished by the ~~public works~~ zoning and planning department, which shall require the following information:

- (1) The name and address of the applicant.
- (2) A general description of the right-of-way or easement which the applicant seeks to have abandoned and the location of same. A legal description and recent survey, prepared and certified to the city by a registered surveyor or engineer, shall be provided, which description shall be accompanied by a plat, map or drawing that also shows the general area involved and the location of the specific property interest sought to be vacated, abandoned, and closed.
- (3) The reason for the requested abandonment, vacation and closure.

- (4) The names and addresses of the owners of record of real property bounding and abutting the right-of-way or easement or city property the applicant seeks to have abandoned, and all owners of record of property located within 1,000 feet in all directions from any point of the right-of-way or easement proposed to be abandoned. The property owners of record shall be deemed to be those shown on the then current tax assessment roll of the city.
- (5) Letters of consent and/or releases from all affected utilities, including but not limited to Florida Power and Light, Miami-Dade County Water and Sewer Department, Florida Public Utility, NUI Gas, Florida City Gas, AT&T, Comcast and other telecommunications companies, as may be applicable, stating that said utility company will release any interest in an easement for the closed and vacated alley.
- (6) Existing utilities or improvements, if any, in the area involved. If utilities and improvements need to be relocated, all details regarding such relocation shall be identified, including dedication of new easements including legal descriptions.
- (7) At least 45 days prior to the consideration of the application by the city council, ~~2010~~ completed copies of the application shall be submitted to the ~~public works zoning and planning~~ department by the applicant.
- (8) Applicant's proposed mitigation plan designed to offset any potential impacts which may be caused by the requested vacation.
- (9) Such other relevant information as the city may require.

The application shall be signed by the applicant, who shall verify under oath that the information contained therein is true and correct.

- (b) The city, through the city manager, may file an application with the ~~public works zoning and planning~~ director to initiate a review of proposed abandonment, vacation and closure of a city right-of-way or easement. The city shall not file an application fee. The city application shall otherwise be reviewed and processed in accordance with the provisions of this article.

Sec. 96-204. - City right-of-way or easement.

- (a) The ~~public works zoning and planning~~ department shall prepare and distribute the application packages to city departments, public agencies and public utility companies as set forth in section 96-203, within ten days of receipt of a completed application for abandonment, vacation and closure of a right-of-way or easement.
- (b) The ~~public works zoning and planning~~ department shall review the application in accordance with the criteria set forth in the application and in section 96-206, and

shall otherwise follow the procedures outlined in this article in reviewing and handling the application, except, however, that the city shall not pay an application fee.

Sec. 96-205. - Application fee and costs.

All applications for abandonment, vacation and closure filed by private property owners pursuant to this article shall be accompanied by an application fee in the amount established by the city council, unless such fee is waived or reduced by the city council upon a showing of good cause. All costs of public notice and advertisement shall be borne by the applicant unless waived by the city council.

Sec. 96-206. - Departments and agencies to receive and review applications.

(a) Applications for vacation, abandonment and closure pursuant to this article, together with the required filing fee, shall be made and directed to the ~~public works zoning and planning~~ department for processing. The ~~public works zoning and planning~~ department shall provide a copy of the complete application to the following departments and agencies for review and comment:

- (1) City manager;
- (2) ~~Planning~~ Public works department;
- (3) Building department;
- (4) Fire-rescue department;
- (5) Police department;
- (6) City clerk;
- (7) City attorney;
- (8) Public utilities and governmental agencies listed in section 96-203; and
- (9) Such other agencies as determined by the director of public works.

(b) The governmental agency, public utility company and departmental review and evaluation of the application shall include, but not be limited to:

- (1) A determination of whether the subject right-of-way is useful as part of the city street system.
- (2) A determination of whether the proposed action is consistent with the city's comprehensive land use plan.
- (3) A study of geographic areas within 2,500 feet that may be impacted by the proposed action and the manner of impact.

- (4) Suggested alternative actions to the proposed action, if any, which would alleviate the identified problems.
- (5) A determination of whether the proposed action may be accomplished in conformance with the standards, rules and regulations of the local, state and federal governing authorities.
- (6) A determination of what additional property, interests, easements, utility relocations, agreements and other actions are necessary to accommodate the proposed action. The applicant may also be required to provide an alternative right-of-way or easement.
- (7) Identification and evaluation of any impact that the proposed action would have on the delivery and provision of service by public services vehicles.
- (8) Identification and evaluation of any impact that the proposed action would have on the surrounding city street system.
- (9) The results of any applicable traffic study.
- (10) An estimated immediate and future cost to the city, if any, of completing the proposed action.
- (11) A study of the reason identified for the proposed action.
- (12) A review of the applicant's proposed mitigation plan to offset potential impacts that may be caused by the requested vacation.

Sec. 96-207. - Procedures relating to applications.

Upon receipt of the application and fee pursuant to this article, the ~~public works zoning and planning~~ department shall:

- (1) Review same for completeness and for compliance with the requirements of this article. The ~~public works zoning and planning~~ department may reject the application if a similar application by the same private property owner has been considered at any time within one year of the date the application is submitted. Upon the application being properly submitted, it shall be accepted for filing with the ~~public works zoning and planning~~ department, which shall give a receipt to the applicant for the fee paid. Once the review procedures outlined in section 96-206 are complete, the ~~public works zoning and planning~~ department shall set a date for review by the zoning and planning board.
- (2) Forward the application together with all comments and recommendations received from city departments, agencies and utility company input, to the city planner who shall review the application pursuant to the criteria set forth in section 96-206 and provide a recommendation to the city manager, who shall

advise the zoning and planning board and the city council of the city's recommendation and any objections to the proposed vacation or abandonment.

(3) Transmit the entire record to the city manager and zoning and planning board. The zoning and planning board, at the conclusion of a duly advertised public hearing, shall review the entire record, in accordance with the procedures set forth in sections 96-206 and 96-208 and provide a recommendation to the city council.

~~(4) Provide courtesy notice by mail to the owners of real property bounding and abutting the right-of-way or easement or city property proposed to be abandoned and, in addition, if a street or alley is to be abandoned, all the owners within 1,000 feet in all directions from any point of the street or alley to be abandoned. The owner of property shall be deemed to be the person shown on the then current tax assessment roll, and such notice shall be sent to the address given on such assessment roll for that purpose. Notice shall be mailed at least two weeks prior to the date of the meeting before the zoning and planning board at which the application shall be considered. The notice provided shall also advise property owners that they may provide comments in writing and/or verbally at the zoning and planning board meeting at which same is to be considered.~~

~~(5)~~ (4) Notify the general public by causing to be published a notice in a newspaper of general circulation in the city of the public hearing to be held by the zoning and planning board on the application and by posting said notice at city hall. Notice shall be published and posted at least ten business days prior to the date of the meeting before the zoning and planning board at which the application shall be considered.

~~(6)~~ (5) Forward the zoning and planning board's recommendations for public hearing at the appropriate city council meeting.

~~(7)~~ (6) Notify by certified mail the owners and occupants of real property, as identified above, of the public hearing to be held before the city council. Notice shall be mailed at least ten business days prior to the date of the meeting before the city council at which the application shall be considered. Provide courtesy notice by mail to the owners of real property bounding and abutting the right-of-way or easement or city property proposed to be abandoned and, in addition, if a street or alley is to be abandoned, all the owners within 1,000 feet in all directions from any point of the street or alley to be abandoned. The owner of property shall be deemed to be the person shown on the then current tax assessment roll, and such notice shall be sent to the address given on such assessment roll for that purpose. Notice shall be mailed at least 10 days prior to the date of the meeting before the city council meeting at which the application

shall be considered. The notice provided shall also advise property owners that they may provide comments in writing and/or verbally at the city council meeting at which same is to be considered. This subsection shall not be construed to mean that notice must be provided to property owners located outside of the city's boundaries.

~~(8)~~ (7) Notify the general public by causing to be published a notice in a newspaper of general circulation in the city of the public hearing to be held by the city council on the application and by posting said notice at city hall. Notice shall be published and posted at least ten business days prior to the date of the meeting before the city council at which the application shall be considered.

Sec. 96-208. - Action by city council.

- (a) The city council shall consider the entire record of the application for abandonment, vacation and closure, which record shall consist of the report and recommendations of the departments, agencies and public utility companies, the recommendations of the city planner and zoning and planning board and the record of the public hearing held before the zoning and planning board.
- (b) In reaching its decision, the city council shall adopt findings of fact and shall also consider the following criteria at a duly advertised public hearing in determining whether the general public welfare would be best served by the proposed action:
- (1) Whether the public benefits from the use of the subject right-of-way as part of the city street system;
 - (2) Whether the proposed action is consistent with the city's comprehensive plan;
 - (3) The availability of alternative action to alleviate the identified problems;
 - (4) The effect of the proposed action upon traffic circulation;
 - (5) The effect of the proposed action upon the safety of pedestrians and vehicular traffic;
 - (6) The effect of the proposed action upon the provision of municipal services, including, but not limited to, emergency services and waste removal; ~~and~~
 - (7) The mitigation plan proposed by the applicant to offset any potential impacts; ;
and
 - (8) The testimony, if any, of property owners within a 1,000-foot radius of the right-of-way that is the subject of the application.
- (c) At the conclusion of the hearing, the city council shall by resolution accept, modify, or deny the application in accordance with the standards set forth in this section and in the best interests of the public welfare. The city council shall deny the application

if the evidence does not support the vacation and closure would be in the best interest of the public and the primary reason for the closure is to provide a benefit for the applicant or adjacent property owners. The city council may attach conditions to an approval including, but not limited to, access and utility easement reservations, landscaping requirements, and public access easements. Upon adoption of a resolution approving an application, a certified copy of same shall be filed in the public records of the county. The costs of all notices and recording required pursuant to the provisions of this article shall be borne by the applicant.

Section 3. **Conflict.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Inclusion in Code.** That it is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 6. **Effective Date.** That this Ordinance shall become effective immediately upon adoption on second reading.

PASSED ON FIRST READING this 11th day of December, 2017, on a motion made by Councilman Best and seconded by Councilman Petralanda.

PASSED AND ADOPTED ON SECOND READING this 8th day of January, 2018, on a motion made by Councilman Best and seconded by Vice Mayor Mitchell.

Vice Mayor Maria Puente Mitchell	<u>YES</u>
Councilwoman Bob Best	<u>YES</u>
Councilwoman Mara Zapata	<u>YES</u>
Councilman Jaime Petralanda	<u>YES</u>
Mayor Billy Bain	<u>YES</u>

BILLY BAIN, MAYOR

ATTEST:



ERIKA GONZALEZ-SANTAMARIA, MMC
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY